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IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA

In Equity

No. T-Eq. 14.

JOHN P. BICKELL, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF THOMSON & McKINNON, AND ALPHEUS C. BEANE, ET AL., CO-PARTNERS TRADING AND DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF FENNER & BEANE,

Plaintiffs,

vs.

J. M. LEE, AS COMPTROLLER OF THE STATE OF FLORIDA,

Defendant.

JURISDICTIONAL STATEMENT.

Comes now J. M. Lee, as Comptroller of the State of Florida, appellant herein, and submits the following statement, particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction, upon appeal to review the final decree entered in this cause on March 10, A. D. 1934, wherein the Comptroller of the State of Florida was permanently and perpetually restrained and enjoined from the enforcement or execution of Chapter 15,787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act, in the particulars set out in the final decree:

1.

The statutory provision believed by appellant to sustain the jurisdiction of the Supreme Court of the United States, is Section 266 of the Judicial Code, the same being Section 380 of Title 28 of U. S. C. A.

2.

The validity of Chapter 15,787, Laws of Florida, Acts of 1931, is involved in this cause, and said statute reads as follows:

"CHAPTER 15787—(No. 69).

AN ACT Levying and Imposing an Excise Tax on Documents to raise Revenue for the Support of the State Government; and Prescribing Penalties for Failure to Pay Said Tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF FLORIDA:

SECTION 1. That on and after the passage of this Act, there shall be levied, collected and paid for and in respect of the several documents, bond, debentures or certificates of stock and indebtedness, and other documents, instruments, matters, writings, and things mentioned and described in Schedule A of this Act, or for or in respect of the vellum, parchment, or paper upon which such document, instrument, matter, writing, or thing, or any of them, are written or printed by any person, firm, association or corporation who makes, signs, executes, issues, sells, removes, consigns, assigns, or ships the same, or for whose benefit or use the same are made, signed, executed, issued, sold, removed, consigned, assigned, or shipped in the State of Florida, the taxes specified in said Schedule A.

SCHEDULE A.

On all bonds, debentures, or certificates of indebtedness issued in the State of Florida by any person, firm or corporation, and all instruments and documents, however termed, issued by any corporation with interest coupons or in registered form, on each $100 of the face value or fraction thereof, 10¢, provided, however, that only that part of the value of the bonds, debentures, or certificates of indebtedness issued by any such person, firm or corporation, the property of which is located within the State shall bear to the whole value of the property described in said instrument or obligation shall be taxed hereunder.

On each original issue, whether organization or reorganization, of certificates of stock issued in the State of Florida, or of profits, or of interest in property or accumulations, by any corporation, on each $100.00 of face value, or fraction thereof, 10¢: Provided, that where a certificate is issued without face value, the tax shall be 10¢ per share, unless the actual value is in excess of $100.00 per share, in which case the tax shall be 10¢ on each $100.00 of actual value or fraction thereof. The stamps representing the tax imposed by this subdivision shall be attached to the stock books, and not to the certificates issued.

On all sales, agreements to sell, or memoranda of sales or deliveries of, transfers of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interests, rights, or not, on each $100.00 of face value or fraction thereof, 10¢; and where such shares are without par or face value, the tax shall be 10¢ on the transfer or sale or agreement to sell on

each share; Provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided; or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

On promissory notes, non-negotiable notes, written obligations to pay money, assignment of salaries, wages, or other compensation, made, executed, delivered, sold, transferred, or assigned in the State of Florida, and for each renewal of the same on each $100.00 of the indebtedness or obligation evidenced thereby, 10¢. Mortgages which incorporate the certificate of indebtedness, not otherwise shown in separate instruments, are subject to the same tax at the same rate.

On deed, instruments, or writings, whereby any lands, tenements, or other realty or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to or vested in the purchaser or purchasers or any other person or persons, by his, her, or its direction, on each $100.00 of the consideration therefor,

10¢: Provided, that when the full amount of the consideration for the execution, assignment, transfer, or conveyance, is not shown in the face of such deed, instrument, document, or writing then in such event the tax shall be at the rate of 10¢ for each $100.00 or fractional part thereof of the consideration therefor.

On proxies for voting at any election for officer or meeting for the transaction of business of any corporation, except religious, educational, charitable, fraternal, or literary societies, or public cemeteries, 10¢ each.

On powers of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 10¢.

SECTION 2. That the administration of this Act shall be vested in the Comptroller of the State of Florida, who shall prescribe suitable rules and regulations for the enforcement of the provisions thereof, and shall administer and enforce the taxes levied and imposed by this Act. He shall have power to enter upon the premises of any taxpayer, and to examine or cause to be examined by any agent or representative designated by him for that purpose, any books, papers, records, or memoranda bearing upon the amount of taxes payable, and to secure other information directly or indirectly concerned in the enforcement of this Act. Any person, firm or corporation subject to this tax, who shall by any practice or evasion make it difficult to enforce the provisions of this Act by inspection, or any person, firm or corporation, agent or officer thereof, who shall, after demand by the Comptroller or any agent or representative designated by him for that purpose, refuse to allow full inspection of the premises or any part thereof, or any books, records, documents, or other instruments in any way relating to the liability of the taxpayer for the tax herein imposed, or shall hinder or in any wise delay or prevent such inspection, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Clerks of the Circuit Court shall report to the Comptroller the names and addresses of any and all individuals, firms or corporations who shall fail to have affixed the required amount of stamps of any conveyance or taxable instrument or document which may be recorded in their respective offices; and any such Clerk who knowingly fails to report any such violation within thirty days after recording of any taxable instrument or document, without such stamps, shall be deemed guilty of a misdemeanor and upon conviction punished accordingly.

SECTION 3. The Comptroller of the State of Florida shall cause to be prepared and distributed for the payment of the taxes prescribed in this Act, suitable stamps denoting the tax on the documents to which same are required to be affixed, and shall prescribe such method for the affixing of said stamps as shall be necessary to carry out and comply with the intent and purpose of this Act.

All revenue laws relating to the assessment and collection of taxes are hereby extended to and made a part of this Act, so far as applicable, for the purpose of collecting stamp taxes omitted through mistake or fraud from any instrument, document, paper, or writing named herein.

SECTION 4. Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this Act, without cancelling or obliterating such stamps as herein provided, shall be guilty of a misdemeanor, and upon conviction shall be punished accordingly.

Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, any adhesive stamp used in pursuance of this Act, or

fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act (1) any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this Act, or (2) any adhesive stamp of insufficient value, or (3) any forged or counterfeited stamp; or whoever wilfully removes or alters the cancellation or defacing marks of, or otherwise prepares any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or wilfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or whoever knowingly or wilfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps, shall be guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than Five Hundred ($500.00) Dollars, or imprisonment of not less than Twelve Months, or both at the discretion of the Court.

SECTION 5. That whenever an adhesive stamp is used for denoting any tax imposed by this Act on documents, the person using or affixing the same shall write or stamp or cause to be written or stamped thereon, the initials of his or its name, and the date upon which same is attached or used, so that the same may not again be used. Stamps shall be affixed in such manner that their removal will require continued application of steam or water; provided, that the Comptroller of Florida may prescribe such other method for the cancellation of such stamps as he may deem expedient.

SECTION 6. All taxes collected under the provisions of this Act shall be paid into the State Treasury to the

credit of the General Revenue Fund of the State of Florida, to be used and expended for the purposes for which said General Revenue Fund was created and exists by law.

SECTION 7. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

Approved July 28, 1931."

The above and foregoing statute will be found on pages 1398 through 1403, both inclusive, of Volume I of the General Acts and Resolutions adopted by the Legislature of Florida during the Regular and Extraordinary Sessions of the year 1931.

3.

The date of the final decree sought to be reviewed, is March 10, A. D. 1934, and the date upon which the application for appeal is presented is the 28th day of March, A. D. 1934.

4.

The plaintiffs (appellees) in this case are stockbrokers, some of whose members are also members of the New York Stock Exchange, and other stock exchanges operated solely outside of the State of Florida. Each firm of stockbrokers maintains several branch offices in the State of Florida, where they accept orders from customers in Florida to buy or sell stocks and bonds upon stock exchanges operated solely outside of the State of Florida. In pursuing their business in their Florida branch offices, there are made in Florida, either by the customer or by the broker, certain writings or documents as, agreements to sell stocks or bonds, memoranda of sales of stocks or bonds, and memoranda of deliveries of stocks or bonds. These writings or documents are made in Florida in connection with the sale or purchase of stocks or bonds that has, at the time the

writing or document is made, taken place or is ordered to thereafter take place, wholly outside of the State of Florida.

It is the duty of the Comptroller of the State of Florida to enforce the provisions of Chapter 15787, Laws of Florida, Acts of 1931, known as the Florida Documentary Stamp Tax Act, which is quoted in full in paragraph 2 above. The Comptroller claims that the agreements to sell, memoranda of sale, and memoranda of deliveries, which are made in Florida, as above mentioned, were and are subject to the provisions of the Florida Documentary Stamp Tax Act, and pursuant thereto he called upon the plaintiffs to affix the stamps to these writings or documents.

The plaintiffs filed their bill of complaint in the United States District Court for the Northern District of Florida, Tallahassee Division, seeking to enjoin the defendant as Comptroller of the State of Florida, from the enforcement of the Act, as against the plaintiffs, in the respects above mentioned, claiming that if it was enforced in these respects, it would be void because in conflict with:

(1) Clause 3 of Section 8 of Article I of the Constitution of the United States, as this would constitute a direct burden on interstate commerce, in which it is alleged the plaintiffs are engaged; and

(2) Section 1 of the Fourteenth Amendment to the Constitution of the United States, as it would deprive the plaintiffs of their property without due process of law, and by denying to them, within the jurisdiction of the State of Florida, the equal protection of the laws.

A three-judge statutory court convoked under Section 266 of the Judicial Code, being Section 380 of Title 28, U. S. C. A., upon a hearing granted an interlocutory injunction, which was filed January 24, A. D. 1934, restraining and enjoining the defendant as Comptroller of the State of Florida, from enforcing the Florida Documentary Stamp

Act, as against the Plaintiffs, in the respects above mentioned. The court set out in its opinion thereon, which was filed on January 24, A. D. 1934, that the Act, if enforced, as contended for by the defendant as Comptroller of the State of Florida, would result in taxing property beyond the jurisdiction of the State, and that this would have the effect of taking the property of the plaintiffs without due process of law, and that the Act was therefore void to that extent, because it was in conflict with Section 1 of the Fourteenth Amendment to the Constitution of the United States.

On March 10, A. D. 1934, the court entered its final decree permanently and perpetually restraining and enjoining the defendant as Comptroller of the State of Florida, from enforcing the Florida Documentary Stamp Tax Act, as against the plaintiffs, in the respects above pointed out, and the court in the final decree adopted the findings of fact and the conclusions of law as set out in the opinion of the court, above mentioned.

The following cases are believed by appellant to sustain the jurisdiction of the Supreme Court of the United States, in respect to this appeal, to wit:

Herkness v. *Irion*, 278 U. S. 92, 49 S. Ct. Rep. 40, 73 L. Ed. 198;

Oklahoma Natural Gas Co. v. *Russell*, 261 U. S. 290, 43 S. Ct. Rep. 353, 67 L. Ed. 659;

Clark v. *Poor*, 274 U. S. 554, 47 S. Ct. Rep. 702, 71 L. Ed. 1199;

Van Dyke v. *Geary*, 244 U. S. 39, 37 S. Ct. Rep. 483, 61 L. Ed. 973;

Interstate Busses Corp. v. *Blodgett*, 276 U. S. 245, 48 S. Ct. Rep. 230, 72 L. Ed. 551;

Graniteville Mfg. Co. v. *Query*, 283 U. S. 376, 75 L. Ed. 1126.

The appellant now submits that the Supreme Court of the United States has jurisdiction of this appeal and that the appellant is entitled to be heard as of right upon appeal pursuant to Section 266 of the Judicial Code, the same being Section 380 of Title 28 of U. S. C. A.

All of which is respectfully submitted,

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(4846-C)